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\$ 25
\$ 1645

I hereby certify that this paper and every paper referred to therein as being enclosed is being deposited with the U.S. Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,

on February 4, 2004 (Date of Deposit)

2/4/04 Stephen A. Anter
Date Name

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 01-391)

In re Application of:

Wahidullah, et al.

Serial No.: 09/821,949

Filed: March 30, 2001

For: Composition Containing Novel
Compound Corniculatonin Having
Antifungi Properties and a Process
for Preparing the Same

Group Art Unit: 1645

Examiner: Nita M. Minnifield

Confirmation No.: 3917

RECEIVED

FEB 12 2004

TECH CENTER 1600/2900

NOTICE OF APPEAL

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby appeal to the Board of Appeals from the Final Office Action dated August 4, 2003, of the primary Examiner finally rejecting Claims 33 through 43.

02/10/2004 DTESSEN1 00000068 09821949

01 FC:1401 330.00 DP

Adjustment date: 03/04/2004 SDIRETA1
02/10/2004 DTESSEN1 00000068 09821949
01 FC:1401 -330.00 DP

Repin. Ref: 03/04/2004 SDIRETA1 0010232900
DMM:132450 Name/Number:09821949
FC: 9204 \$950.00 CR



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 01-391)

PATENT AND TRADEMARK OFFICE
CHICAGO, ILLINOIS 60606

FEB 27 2004

In the Application of:)
)
Solimabi Wahidullah, et al.)
) Examiner: N. Minnifield
Serial No.: 09/821,949)
) Group Art Unit: 1645
Filing Date: March 30, 2001)
)
For: Composition Containing Novel Compound)
Corniculatonin Having Antifungi)
Properties And a Process for Preparing)
the Same)

PETITION FOR REFUND OF FEES (C.F.R. § 1.26) ASSOCIATED WITH
PETITION OF THREE-MONTH EXTENSION OF TIME
AND
NOTICE OF APPEAL,
MAILED ON FEBRUARY 4, 2004

Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests a refund of fees paid in connection with a petition for a three-month extension of time and a Notice of Appeal, both filed on February 4, 2004. Applicants authorize the Commissioner to credit the amount of the three-month extension of time (\$950.00 and \$330) to our deposit account number 13-2490.

A brief summary of the facts surrounding this request begins on page 2.

The return receipt postcard filed with the Response to Provoke an Advisory Action is included herewith.

\$ 1280.00

Circumstances Surrounding Request For Refund

STATUS AND EVIDENCE
BRANCH

10/27/03 11:23

1. On Monday, October 6, 2003, Applicants timely filed a response to the Final Office action (mailed August 4, 2003) in order to provoke an Advisory Action. As October 4, 2003 was a Saturday, Applicants response dated Monday, October 6, 2003 was properly considered filed in time to provoke an Advisory Action. M.P.E.P. § 706.07(f).

2. Applicants received the return receipt postcard, which was stamped and dated by OIPE on October 9, 2003 (see attached copy of stamped postcard).

3. The undersigned contacted the Examiner in charge of this case by phone in early January 2004 to discuss the progress of prosecution. The Examiner did not indicate that Applicants' response to Provoke Advisory Action would not be acted upon within the statutory six-month period for response.

4. Applicants have not received an Advisory Action from the Office. In order to guarantee that the application remained pending, Applicants filed on February 4, 2004 a Notice of Appeal and fee (\$330.00) along with a Petition for a three-month extension of time and fee (\$950.00).


5. Applicants respectfully request a complete refund of the fees associated with the Petition for a three-month extension of time (\$950.00) and the Notice of Appeal (\$330) because the Office failed to act on the Response to Final Office Action within the six-month statutory period for reply.

Applicants respectfully request that the Office act on the pending application in light of the Amendment and Response filed on October 6, 2003, and issue an Advisory Action or Notice of Allowability/Allowance. In order to preserve the application, Applicants were forced to file the Notice of Appeal and associated Petition for extension of time through no fault of their own, as the Final Office Action clearly announced that "[i]n no event...will the statutory period for reply expire later than SIX MONTHS from the date of this final action." (Page 6, ¶7).

In summary, Applicants have complied with the rules in order to provoke an Advisory Action, and respectfully request that the Office act on the application in light of the Amendment and Response to Final Office Action. Applicants also respectfully request reimbursement of the fees paid in connection with the Notice of Appeal (\$1280.00 total), filed February 4, 2004.

Respectfully submitted,
McDonnell Boehnen Hulbert & Berghoff

Date: February 18, 2004


Stephen H. Docter
Registration No. 44,659

Hon. Commissioner of
Patents and Trademarks

09/821,949

Atty SHD

Re: Applicant - Solimabi Wahidullah, et al

Case No. 01-391

**A Composition Containing Novel Compound Corniculatin Having Antifungal
Properties and a Process for Preparing the Same**

Sir:

Please place the Patent Office receipt stamp hereon and mail to acknowledge receipt of:

- ☒ Transmittal Letter
- ☒ Response to the Office Action mailed August 4, 2003

Fee Enclosed
\$ 00.00

Respectfully,
McDonnell Boehnen Hulbert & Berghoff
Attorney for Applicant

Date Mailed: October 6, 2003





PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No.01-391)

In re Application of:)	
)	
Wahidullah, et al.)	
)	Group Art Unit: 1645
Serial No.: 09/821,949)	
)	Examiner: Nita M. Minnifield
Filed: March 30, 2001)	
)	
For: Composition Containing Novel)	
Compound Corniculatonin Having)	
Antifungi Properties and a Process)	
for Preparing the Same)	

TRANSMITTAL LETTER

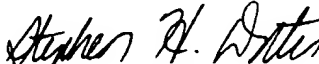
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In regard to the above identified application,

1. We are transmitting herewith the attached:
 - a) Petition for Refund of Fees (C.F.R. § 1.26); and
 - b) Return Receipt Postcard
2. With respect to fees:
 - a) No Fee Required
 - b) Please charge any underpayment or credit any overpayment our Deposit Account, No.13-2490.
3. **CERTIFICATE OF MAILING UNDER 37 CFR § 1.8:** The undersigned hereby certifies that this Transmittal Letter and the paper(s), as described in paragraph 1 hereinabove, are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22131-1450 on this 18th day of February, 2004.

Respectfully submitted,

Date: February 18, 2004



Stephen H. Docter
Registration No. 44,659